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FINANCING OF THE UNITED NATIONS PROTECTION FORCE, THE UNITED NATIONS CONFIDENCE RESTORATION OPERATION IN CROATIA, THE UNITED NATIONS PREVENTIVE DEPLOYMENT FORCE AND THE UNITED NATIONS PEACE FORCES HEADQUARTERS

ADMINISTRATIVE AND BUDGETARY ASPECTS OF THE FINANCING OF THE UNITED NATIONS PEACEKEEPING OPERATIONS: FINANCING OF THE UNITED NATIONS PEACEKEEPING OPERATIONS

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General (A/51/389) submitted pursuant to paragraph 16 of General Assembly resolution 50/235 of 7 June 1996, in which the Assembly requested the Secretary-General to develop revised cost estimates for third-party claims and adjustments, following completion of the thorough study to be completed by the Legal Counsel.

2. The report of the Secretary-General addresses the issues raised by the Advisory Committee in paragraph 20 of its report of 6 May 1996 (A/50/903/Add.1), wherein it recommended that the Secretary-General develop and propose during the fifty-first session of the General Assembly appropriate measures and procedures which would provide for a simple, efficient and prompt settlement of third-party claims, secure United Nations interests, limit its liabilities and allow for a coordinated approach to this issue on the part of the United Nations organizations, agencies and programmes.

3. During its consideration of the Secretary-General's report, the Advisory Committee met with representatives of the Secretary-General who provided clarifications and additional information. The Committee commends the Secretariat for the report and trusts that follow-up measures, as may be necessary, will be taken promptly by the Secretariat.

4. The Advisory Committee notes from the footnote to paragraph 3 of the Secretary-General's report that third-party claims, for the purpose of the report, did not include claims arising within the context of a contractual or other direct legal relationship between the claimant and the United Nations. Claims arising from contracts or leases were, therefore, excluded from the study.

5. The Secretary-General's study of the scope of United Nations liability for the activities of United Nations forces is described in relation to the types of damage most commonly encountered in the practice of United Nations operations, that is, non-consensual use and occupancy of premises, personal injury and property loss or damage arising from the ordinary operation of the force, and such injury and damage as result from combat operations.

6. In paragraphs 6 to 8 of his report (A/51/389), the Secretary-General outlines the principle of United Nations liability for the activities of its forces, in conformity with section 29 of the Convention on the Privileges and Immunities of the United Nations. As stated in paragraph 7 of the report, the United Nations has, since the inception of peacekeeping operations, assumed its liability for damage caused by members of its forces in the performance of their duties and it has undertaken in article 51 of the model status-of-forces agreement to settle by means of a standing claims commission claims resulting from damage caused by members of the force in the performance of their official duties.

7. At the same time, as indicated in paragraph 13 of the report, the liability of the Organization for property loss and damage caused by United Nations forces in the ordinary operation of the force is subject to the exception of "operational necessity", that is, where damage results from necessary actions taken by a peacekeeping force in the course of carrying out its operation in pursuance of its mandate. Paragraph 14 of the report outlines parameters that must be taken into account in deciding upon the operational necessity of any given measure.

8. The Advisory Committee welcomes the development of the concept of "operational necessity" which has been formally presented in a document for the first time, although it has already been applied in the practice of Claim Review Boards as an exception from liability. The Committee welcomes the proposal of the Secretary-General to formally incorporate the exemption due to "operational necessity" in article 51 of the model status-of-forces agreement.

9. The Advisory Committee notes from the observations reflected in paragraph 22 of the report that, to date, third-party claims of a private law nature have been settled without resort to the establishment of standing claims commissions provided for under article 51 of the model status-of-forces agreement. The Committee requests that the Secretary-General review the current provisions of article 51 which have proved to be unrealistic or ineffective, with a view to proposing, in the light of the acquired experience in this matter, new procedures for the handling of this type of third-party claim.

10. In paragraphs 38 to 44 of his report, the Secretary-General discusses several means of limiting the liability of the Organization, such as financial

and temporal limitation, counter-claims and off-sets, and recovery from the States contributing contingents in specific cases of gross negligence, wilful misconduct or international criminal responsibility on the part of a member of the force. The Advisory Committee concurs in the view of the Secretary-General with regard to the financial and temporal limitations, although such aspects of the limitations as the ceiling of compensation, modalities of establishing the financial limitation of the Organization and duration of the limitation period must be further studied.

11. With regard to the issue of counter-claims and off-sets outlined in paragraph 41 of the report, the Advisory Committee notes situations in which the United Nations has claims against the host Government, arising out of payments made by the Organization, which it was under no legal obligation to make, in order to enable the mission to continue to function. The Committee recalls that the Board of Auditors, in paragraphs 129 and 130 of its report on the accounts of the United Nations peacekeeping operations for the biennium ended 31 December 1995, 1/ indicated that the United Nations Protection Force (UNPROFOR) had paid excise duty on its purchase of petroleum, oil and lubricants since 1 October 1993, contrary to the status-of-forces agreement and United Nations general conditions on contracts, and that the duty, which was paid under protest to avoid uninterrupted supply of fuel to UNPROFOR, was estimated to amount to $37 million by 31 March 1996. The Committee points out that such claims are not counter-claims; they are requests for restitution arising out of non-compliance by the host Government with agreements previously entered into; as such they should be vigorously pursued whether or not any claim exists by that Government. The Committee requests that it be provided with a compendium of all instances where the United Nations is entitled to restitution as the result of non-compliance with status-of-forces or other agreements.

12. With regard to the cost estimates contained in paragraphs 49 to 53 of the report, the Advisory Committee notes that the amount of $10 million authorized for the period from 1 January to 30 June 1996 and the amount of $5.5 million contained in the cost estimates for the period from 1 July 1996 to 30 June 1997 are considered by the Secretary-General to be adequate at the present stage for the settlement of claims, based on the number of actual claims received since the cost estimates were prepared, the rate at which claims continue to be received by the United Nations Peace Forces (UNPF) headquarters, the number of claims that have been settled or closed and the number and value of outstanding claims (para. 53).

13. The Advisory Committee also notes from paragraph 26 of the Secretary-General's report that:

> "Recent United Nations operations have encountered an increasing number of claims being filed against the Organization. Some of these claims are substantial, involving potentially high amounts of compensation to be paid by the Organization. The number of low-value claims, as well as the number of frivolous claims, have also increased, notably in missions such as the United Nations Operation in Somalia and UNPF".

The Committee was informed that the undocumented claims listed in the submission of 11 May 1996 of the Government of Bosnia and Herzegovina amount to a total of

$70.7 million (see annex). This sort of information is, in the view of the Committee, compelling evidence of the need for the United Nations to develop, as quickly as possible, effective measures which could limit its liability.

14. Furthermore, the Advisory Committee notes from paragraph 52 of the report that a total of 151 claims remain pending in UNPF, which include 37 cases amounting to $28.8 million, and that the claims are not presented in a way that allows the individual elements of work to be identified. The Committee recommends that the Organization establish a standard format in which claims must be prepared if they are to be considered by the United Nations. This will allow claimants to present information in a standard and verifiable manner and will facilitate the processing of claims by the United Nations.

15. The Advisory Committee recommends that the General Assembly endorse the proposals and recommendations regarding limitations on the liability of the Organization contained in paragraphs 38 to 44 of the report of the Secretary-General (A/51/389), taking into account the Committee's observations in the preceding paragraphs. The Secretary-General should be requested to develop specific measures, including criteria and guidelines for implementing the principles outlined in his report and to report thereon to the General Assembly through the Advisory Committee.

Notes

1/ Official Records of the General Assembly, Fifty-first Session, Supplement No. 5 (A/51/5), vol. II.

Annex

UNDOCUMENTED CLAIMS LISTED IN THE SUBMISSION OF 11 MAY 1996
OF THE GOVERNMENT OF BOSNIA AND HERZEGOVINA

Claimant	Description of claim	Amount (United States dollars)	Action taken/status
Drina Construction Company, Gorazde	Unpaid bill for delivered building material	104 395	No record
Ministry of Agriculture, Igman Mountain, Malo and Veliko Polje	Unnecessary woodcutting and expenses for reforestation	798 900	No record
201-84 (Sarajevo Olympic Committee)	Damage to sport and touristic facilities in Mount Igman	2 480 000	No record
Marshal Tito Barracks	Damage to buildings	782 000	No record
Marshal Tito Barracks	Damage to roads and parking places	2 170 000	No record
Marshal Tito Barracks	Damage to buildings	915 000	No record
Marshal Tito Barracks roads	Damaged roads and parking places	998 300	No record
Bistrik Barracks, Sarajevo	Damage to buildings	698 000	No record
Ciglane Barracks	Damage to buildings	182 200	No record
Sarajevo Airport	Damage to roads, buildings, terminals, drainage installations and runway	18 260 000	No record
Roads of the Federation Territory	Damage to 1.175 km of roads caused by United Nations vehicles	43 351 000	No record
Railway bridge, Visoko	Damage to the bridge	8 000	No record
	TOTAL	70 747 795	